IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 4238 of 2001

Between:

S.S.Basha S/o S.M.D.Khasim
R/o Kolimi Street, Rajampet,
Cuddapah District.

..... PETITIONER

AND

1 The A.P.S.R.T.C., Rep. by its Managing Director & Chairman
Musheerabad, Hyderabad.
2 The A.P.S.R.T.C., Rep. by its Regional Manager
Cuddapah Region, Cuddapah District.
3 The A.P.S.R.T.C., Rep. by its Depot Manager
Rajampet Depot, Rajampet,
Cuddapah District.

.RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction or writ particularly one in the nature of Writ of Mandamus declaring the action of the 2nd Respondent Reinstate the petitioner as Conductor Grade-II afresh without giving continuity of service and without giving full backwages and all attendent benefits by the 2nd Respondent by its Proceeding No.PA/20A(74)/2000-RM"C", dt.8-12-2000 is wholly illegal, arbitrary and unjust and contrary to law and also violative of Articles 14, 16 & 21 of the Constitution of India and consequently direct the Respondents to give continuity of service to the petitioner with full backwages and all other attendent benefits.

Counsel for the Petitioner: MS.B.MALLESWARI

Counsel for the Respondents: MR.A.V.SIVAIAH

The Court made the following:

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the second respondent in reinstating the petitioner as Conductor Grade-II afresh without giving continuity of service, full backwages and all attendant benefits, as illegal and arbitrary.

On 26-01-2000 at about 12-20 hours, the petitioner entered the Chart Booking Room and abused the Controller in filthy language. Thereupon, a show cause notice was issued to the petitioner and charges were framed against him and also a preliminary enquiry was conducted. Basing on the report of the enquiry officer, the petitioner was removed from the service by the disciplinary authority vide proceedings, dated 01-11-2000. Challenging the same, the petitioner filed an appeal on 07-11-2000 before the Deputy Chief Traffic Manager, Kadapa, who rejected the same. Thereupon, a review petition, dated 01-12-2000, has been filed before the Regional Manager, Kadapa, and the Regional Manager vide his order, dated 08-12-2000, having accepted the findings of the enquiry officer came to a conclusion that the punishment is disproportionate and ordered to reinstate the petitioner for Conductor Grade-II afresh, but he has not ordered for continuity of service and full backwages and the attendant benefits. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner vehemently contends that the petitioner has acquired 15 years of service in the Corporation and there is no other misconduct except the present one where some filthy language has been used against the superior officer and that alone is not sufficient for not ordering continuity of service and full backwages and hence, she prays to set aside the same.

On the other hand, the learned counsel appearing for the respondents contends that the misconduct of the petitioner comes within the meaning of insubordination as he abused the Controller on duty in filthy language, therefore, the order of removing the petitioner from service cannot be set aside and prays to dismiss the writ petition.

No challenge was made to the procedure in conducting the departmental enquiry. It is not a case where principles of natural justice have been violated in conducting the departmental enquiry. It is also not a case of the petitioner that he was denied of opportunity of adducing any evidence.

The order passed by the appellate authority was also challenged. Therefore, the scope of the judicial review is limited where the punishment imposed is shockingly disproportionate to the proof of misconduct.

The learned counsel for the petitioner in support of her contention relied upon the decision of the Supreme Court in ***VED PRAKASH GUPTA Vs. M/S. DELTON CABLE INDIA (P) LIMITED[1],*** wherein it is held:

> "We are therefore of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him. We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory."

Learned counsel also relied upon the decision of the Supreme Court in ***RAM***

KISHAN Vs. UNION OF INDIA & ORS.[2]**,** wherein it is held:

> "When abusive language is used by anybody against a superior it must be understood in the environment in which the person is situated and the circumstances surrounding the event that led to the use of the abusive language. No straight jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service."

Learned counsel further relied upon the decision of the Supreme Court in ***RAMA KANT MISRA v. STATE OF UTTAR PRADESH AND OTHERS***[3]***:*** where in it is held:

> "In order to avoid the charge of vindictiveness, justice, equity and fairplay demand that punishment must always be commensurate with the gravity of the offence charged."

From the above decisions, it is clear that unless punishment is disproportionate to the gravity of misconduct, normally this Court will not interfere with the decision taken by the administrator. In all the above cases, the order of removal was set aside. The workmen therein were ordered to be reinstated with all benefits, but in this case there is no evidence adduced to show that the petitioner hails from a remote village but at the same time, there is no allegation that the petitioner has abused any other person prior to the present incident or after the present incident. This is the only first incident of misconduct took place on 26-01-2000. The language used by the petitioner is highly objectionable, but in the absence of any previous misconduct, some lenient view can be taken with regard to the punishment. The reviewing authority has already taken a lenient view by reinstating the petitioner as a fresh Conductor Grade-II. At the same time, using of such a vulgar language cannot be permitted to use with any other employees of the Corporation. Since the order passed by the disciplinary authority cannot be said to be totally perverse or illegal, the continuity of service can be granted to the petitioner.

Accordingly, the writ petition is partly allowed reviewing the order of the reviewing authority by giving continuity of service to the petitioner without any back wages whose service cannot be taken into account for the purpose of computing the increments or promotions. However, the continuity of service can be effected for the purpose of computing pension and other retirement benefits. No costs.

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K.C.BHANU, J

Dated: 07-06-2005

LSK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the acting Chief ustice on this Tuesday the Seventh day of June Two thousand and five.

To

1 The Managing Director & Chairman
Musheerabad, Hyderabad.
2 The Regional Manager, A.P.S.R.T.C.,
Cuddapah Region, Cuddapah District.
3 The Depot Manager, A.P.S.R.T.C.,
Rajampet Depot, Rajampet, Cuddapah District.

4 Two C.D. copies.